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IDAHO PERSONNEL COMMISSION

STATE OF IDAHO

ED HALE; KEN BABIN; CHUCK, ANSELMO; RICK BARLOW; LOREN (ED) BRAUN; ROBERT CAMP; ROB EACHON; SHAWN ELLISON; JEAN HUGHES ; DAVE HYLSKY ; MIKE NELSON; and ANNETTE DUEROCK, Appellants, vs. PANHANDLE HEALTH DISTRICT, Respondent.	IPC NO. 02-17 DECISION AND ORDER ON PETITION FOR REVIEW

Appellants petition for review of the Hearing Officer's decision regarding personnel actions taken as part of a Panhandle Health District ("PHD") restructure/reorganization. PHD is one of seven health districts in Idaho. It was determined by the Council of District Directors ("CoDD") that there was growing pay disparity between the EHS categories for the health districts compared to analyst positions in the Department of Environmental Quality. In addition the CoDD desired to have a system that provided for advancement based upon merit rather than longevity. Therefore, on May 29, 2001, DHR, at the request of PHD, undertook action (whether it be labeled as a "restructuring", a "reorganization" or by some other label), which affected the three classes of positions at issue in this matter–Environmental Health Specialist-Supervisor

(EHS-Supervisor), Environmental Health Specialist-Senior (EHS-Senior) and Environmental health Specialist-II (EHS-II). Although PHD is not a "state agency by statute[1], the rules of the Division of Human Resources and Idaho Personnel Commission are made applicable by agreement between PHD and the Division of Human Resources (hereinafter referred to as "DHR"), as allowed by I.C. § 39-401. The Commission has jurisdiction in this matter pursuant to Idaho Code § 67-5316(1)(b).

Following the one-day evidentiary proceeding, the Hearing Officer determined that the actions taken by PHD in the restructure/reorganization did not result in any Appellants being deprived of pay, benefits or other compensation to which they were entitled except for promotional pay increases due to certain Appellants in the EHS-Senior class - Anselmo, Barlow, Camp, Eachon, Ellison, Hughes and Nelson. For the reasons set forth in this decision, we affirm the decision of the Hearing Officer.

I.

ISSUES

1. Whether the Hearing Officer erred by holding that the Appellants occupying the classes of EHS-Supervisor (Hale and Babin) and EHS II (Duerock) were not entitled to a pay increase upon reallocation on May 29, 2001?

2. Whether the Hearing Officer erred in holding that the actions, with respect to the EHS-Senior class Appellants, commencing May 29, 2001 and culminating in October 2002 constituted "promotions" entitling them to pay increases as of October 15, 2002?

[1] I.C. § 39-401 provideds that "It is legislative intent that health districts operate and be recognized not as state agencies or departments, but as governmental entities whose creation has been authorized by the state, much in the manner as other single purpose districts."

II.

STANDARD OF REVIEW

When a matter is appealed to the Idaho Personnel Commission it is initially assigned to a Hearing Officer. I.C. § 67-5316(3). The Hearing Officer conducts a full evidentiary hearing and may allow motion and discovery practice before entering a decision containing findings of fact and conclusions of law. Soong v. Idaho Department of Welfare, IPC No. 94-03 (February 21,1996), aff'd., 132 Idaho 166, 969 P.2d 261 (Ct. App. 1998).

In cases involving whether a state agency action has deprived a classified employee of a right and/or benefit to which an employee is entitled by law (Commission jurisdiction pursuant to I.C. 67-5316(1)(b)), the Appellant must prove its case by a preponderance of the evidence. IDAPA 15.04.01.201.07 (in actions other than disciplinary actions, the "appellant has the burden of proof by a preponderance of the evidence".) That is, the burden of proof is on the Appellant to show that the state agency action or inaction has deprived Appellant of a right and/or benefit to which Appellant is entitled by a preponderance of the evidence.

On a petition for review to the Idaho Personnel Commission, the Commission reviews the record, transcript, and briefs submitted by the parties. Findings of fact must be supported by substantial, competent evidence. *Hansen v. Idaho Dep't of Correction*, IPC No. 94-42 (December 15, 1995). We exercise free review over issues of law. The Commission may affirm, reverse or modify the decision of the Hearing Officer, may remand the matter, or may dismiss it for lack of jurisdiction. I.C. § 67-5317(1).

Soong, supra.

III.

BACKGROUND

The crux of the dispute centers around certain characterizations of what occurred when PHD underwent its restructure/reorganization efforts with the three classes involved and whether, based upon the proper characterizations, any Appellants were deprived of a right or benefit to which they were entitled. At this point it is helpful to establish what did occur with respect to the positions involved and provide some basic definitions and background to lay the foundation for the rest of this decision.

The technical terms involved are defined in the rules of the Division of Human Resources and Idado Personnel Commission set forth at IDAPA 15.04.01.010 (hereinafter referred to as "Rules" or by individual "Rule")[2]. "Allocation" is [t]he assignment of a class to a pay grade in the compensation schedule". See Rule 010.01. All classified positions are assigned to a class and hence, by allocation, to a pay grade. The level of pay associated with each paygrade falls within a stated range along a payline. Under past practice, there were "steps" along a given payline with each movement along a step being in increments of 2.5%. At present, there are no "steps" and the payline within each paygrade represents a "continuum" between the low end and high end of the payline.

Although currently not specifically defined[3], from the definition of "allocation", "**re**allocation" is sensibly the **re**assignment of an existing class to a different pay grade. The first "allocation" of a newly created class to a pay grade is not a "reallocation". The "reclassification

[2] DHR has recently promulgated many changes to the Rules during Legislative Session 2004. These revised rules went into effect at the close of the Session on or about March 20, 2004. However, for purposes of this appeal those rules referenced herein are the "old" rules that were in effect at all relevant times involving this matter.

[3] As referred to in Harmon v. Idaho Dept. of Law Enforcment, IPC No. 95-20 (January 7, 1997), p. 7, footnote 2, "reallocation" was once defined by former DHR/IPC rule (IDAPA 28.01.01.010.46) as a "change of a class from the pay grade to which it is allocated in the compensation schedule to another pay grade of either higher or lower entrance salary."

of a position" is "a change of a position from the class to which it is assigned to another class." See Rule 010.49. If a position is redefined so that, for example, there are additional responsibilities and duties with respect to the position, and the redefinition causes the position to move from one class to another existing class, then a "reclassification" has occurred. If there is no existing class within which the redefined class specification can be placed, then a "new class" is created. See Rule 010.40 (defining "new class" as "a classification that is not essentially described by any existing job classification").

From the undisputed evidence presented at the hearing, the only action taken with respect to the EHS-Supervisor position (occupied by Appellants Hale and Babin) and the EHS-II position (occupied by Appellant Duerock) was a reevaluation and a movement to a higher paygrade. Responsibilities and duties remained the same. The EHS Supervisor class was moved from paygrade "K" to "L" and the EHS II class was moved from paygrade "I" to "J". We hold, therefore, that these classes were reallocated. We further hold that no salary increase is required for employees in these reallocated positions except to the extent necessary to assure that the employee's salary at least meets the minimum level of the new paygrade and that there is no reduction in the employee's salary.

The actions of PHD in creating a new position description for the EHS–Senior class included the addition of responsibilities and supervisory duties. These additions changed the requirements of the position and created a classification that was not described by any existing job classification. Therefore, we hold that the action of the PHD resulted in the creation of a new class and an allocation of that new class to paygrade "K".

IV.

DISCUSSION

A. The Hearing Officer Correctly Held That Appellants Occupying the Classes of EHS-Supervisor (Hale and Babin) and EHS-II (Duerock) Were Not Legally Entitled to a Pay Increase Upon Reallocation on May 29, 2001.

Appellants Babin, Hale and Duerock contend each is entitled to an automatic pay increase upon reallocation in order to maintain their pre-allocation relative position on their prior pay grade with respect to the new pay grade to which each was reallocated on May 29, 2001. Essentially, Appellants Babin and Hale assert they were entitled by law, and PHD policy, practice and procedure to maintain the same relative position on pay grade "L" as each previously occupied on pay grade "K" and Appellant Duerock asserts the same thing with respect to her move from pay grade "I" to "J". Such entitlement would amount to substantial pay increases of approximately 8-9% for each according to testimony at the hearing.

The Hearing Officer considered substantial testimonial evidence and documentary evidence in the form of exhibits on this issue and her findings are supported by this evidence. Although Appellants contend that the evidence supporting such a pay increase is uncontroverted, the evidence is actually conflicting.

Exhibit E, being the only written statement of PHD policy submitted into evidence, says nothing about automatic pay increases upon "reallocation" but rather simply states that job classes can be reallocated to higher or lower pay grades. It does provide for salary protection if a particular class is reallocated to a lower pay grade as is mandated by Idaho law and DHR rule. See Exhibit E, Section 3-3. The pay increase referenced in Exhibit E, Sec. 3-8 regards promotion or reclassification of individual employees, not reallocation or reassignment of an entire class. Exhibit F is evidence of a "classified payline movement upward, revised point

factoring," regarding Panhandle Health District I employee Kendig. The effective date of this "PU" (pay line movement upward) was August 27, 1995, and there was no change in the pay rate/salary for Kendig associated with it. Appellant offers no distinction between this PU action and the PU actions in Exhibits 6, 7 and 12; Appellants rely on the latter as evidence that revised point factoring leading to a classified payline movement upward has always previously involved a pay increase at PHD.

Exhibits 6 and 7 show the effect of state-wide reallocations occurring in 1979, 1981 and 1982 for the single employee, Appellant Babin. These actions involved pay increases, but also occurred when paylines included steps and otherwise would have involved an increase in grade, but decrease in step. The "continuum" characteristic of the current pay line of each pay grade involves no steps. Exhibit 12 has the whole history of Babin's progression through the personnel system. This exhibit reflects numerous PU's (movements to higher paygrade) from 9/14/73 through 4/28/02.

There are twelve such actions, including the three referenced above. Of the twelve, nine involved pay increases and three did not. The former all occurred before 1988 and the latter occurred in 1989, 1990 and 1991. Specifically, according to Exhibit 12, on 9/4/88, Babin's pay rate was $15.40. On 6/11/89, there was a "PU" resulting in Babin having a pay rate of $15.40. On 10/1/89, Babin had a pay rate of $16.97. On 6/10/90, there was a "PU" with a resulting pay rate for Babin of $16.97. ON 6/10/90, Babin had a pay rate of $18.26. On 6/9/91, there was a PU with a resulting pay rate of $18.26. On each of these "PU" dates, there was also a pay increase entry. However, all of the pay increases are designated as merit increases and not the consequence of "PU" or reallocation.

There is nothing in the testimony or argument that distinguishes what occurred in 1989, 1990 and 1991 from the earlier actions, except timing. If the 1989, 1990 and 1991 PUs without pay increases can be distinguished on some other basis from the earlier PUs with pay increases, then the Exhibit reflects that the most recent PU with a pay increase occurred in September 1987. Thus, the historical evidence in support of Appellants' contention for automatic pay increases associated with re-allocation is either outdated or contradicted. This includes the copy of this Commission's "1986 Legislative Wrap-Up" attached to Appellant's Brief as Exhibit B, even if considered by the Commission on petition for review[4], because at that time, the pay lines still included steps.

Appellants have failed to prove any entitlement or right, established by PHD policy, practice or custom, to a pay increase as an automatic result of PU, being reassignment or reallocation of a class to a new paygrade. Appellants Babin, Hale & Duerock have failed to prove that they are entitled to an automatic pay increase on the basis of established PHD policy, practice or custom. Appellants have pointed to no provision in the rules of the Division of Human Resources and Personnel Commission, IDAPA 15, Title 04, Chapter 01 in support of the

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[4] Exhibit "B" to Appellants' Opening Brief (Commission's "1986 Legislative Wrap Up") and Exhibit ii to Respondent's Reply Brief of District on Appeal (Change in Employee Compensation Supplement, pp. 28-30) are not found in the record established before the hearing officer. Idaho Code § 67-5317 provides in pertinent part:

> "If a petition for review is filed, the personnel commission shall review the record of the proceeding before the hearing officer, briefs submitted in accordance with any briefing schedule it orders, and any transcripts submitted of the hearing below."

IDAPA 15.04.01.202.03 provides:

> **"Nature of Hearing**. The hearing of the Commission on a petition for review shall be limited to oral arguments regarding issues of law and fact as may be found in the record established before the hearing officer and any post-hearing orders."

As demonstrated by statute, and more specifically by Idaho Personnel Commission rule, the Commission on petition for review only considers the record established before the hearing officer and does not consider any documents, exhibits or other evidence not part of the record of the hearing officer below.

proposition that a pay increase to maintain "relative position" must accompany the reassignment or reallocation of a class to a new paygrade. There is none.[5]

Nor do Appellants point to any particular statute wherein such a right can be found. Appellants claim that the right to a pay increase upon reassignment or reallocation of one's class to a new paygrade is inherent and based upon the legislative intent with regard to the personnel system as expressed in I.C. § 67-5309C. Appellants assert that it is the expressed intention of the Legislature "that an employee may expect to advance in the salary range to the labor market average rate for the pay grade assigned to a classification". See I.C. 67-5309C(b). This is true. However, this intent does not stand for the proposition that Appellants submit it does. It does not entitle classified state employees to automatic pay increases upon reallocation to a higher pay grade. All that is required upon reallocation is that each employee be compensated at a rate that fits within the continuum of the new pay grade.

In light of the lack of rule or statutory entitlement to automatic pay increases in order to maintain pre-allocation relative position on the new pay grade, Appellants set forth what is, essentially, an equity argument. In essence, Appellants contend it is unfair. See Appellants' Opening Brief on Appeal, pp. 22-23. To sum, Appellants assert that when a class is reallocated and all employees are moved to a higher paygrade, it results in an inequitable loss of seniority and merit increases for an employee who is not placed at the same relative position along the new paygrade when compared to a less senior employee, placed at the low end/starting point of the pay continuum.

[5] While not persuasive or authoritative in the Commission's decision in this matter, it is interesting to note that Harmon v. Idaho Dept. of Law Enforcement, IPC. No. 95-20 (January 7, 1997) provided guidance referencing a prior rule (former IDAPA 28.01.01.072.06): "If a class is reallocated upward, the employee's salary remains the same or is placed at the lower level of their assigned pay grade, whichever is greater." Id. at p. 7, footnote 2.

Appellants illustration of this "inequity", (Id.) assumes a less senior EHS-Senior and a more senior EHS-Senior are both placed at the low end of the pay continuum- the starting point of the new paygrade. See Appellants' Opening Brief on Appeal, p 22, lines 11-14. This is simply not so. If that had been done, the EHS-Senior Appellants would have taken pay cuts because all were being paid at rates higher than the minimum starting point of pay grade "K". This did not occur. Even had the EHS Senior Appellants been "reallocated", there was no loss in pay attributed to the "reallocation"[6]. The referred-to EHS-Senior Doug Lowe (not an appellant) did, indeed, receive a pay increase upon the alleged "reallocation" to pay grade K but this was because his pay rate at pay grade "J," prior to the alleged "reallocation" was less than the minimum pay rate of new pay grade "K". The referenced Appellant Eachon's pay rate prior to alleged "reallocation" was well within the pay grade "K" continuum and no pay increase was required. Mr. Eachon, nor any of the Appellants "lost" anything.

What they categorize as a "loss", using Appellants' illustration, is a decrease in the gap between the more senior appellants, like Rob Eachon, and the less senior EHS-Senior, Doug Lowe, which resulted solely because Doug Lowe's pay rate prior to alleged "reallocation" happened to not fall within pay grade "K", requiring a pay increase to the minimum pay rate of the pay grade "K". The Appellants were all being paid at a rate that fell within both pay grades and the alleged "reallocation" to pay grade "K" only resulted in raising the ceiling of the pay rate potential in their new pay grade. This does not amount to a loss of anything and Appellants were not deprived of a right or benefit to which they were legally entitled.

[6] Appellants' illustration of the alleged "inequity" erroneously assumes the EHS-Senior Appellants were "reallocated". As discussed below in Section IVB, they were not. The Commission only refers to this alleged "reallocation" in addressing Appellants' "inequity" illustration, and referral to the alleged "reallocation" of EHS-Senior Appellants does not signify any finding by the Commission that they were.

B. The Hearing Officer correctly characterized PHD's actions with respect to the EHS-Senior class Appellants as the creation of a "new class" on May 29, 2001 and "promotions" of certain Appellants into this new class on October 15, 2002, thus legally entitling certain Appellants to pay increases according to PHD policy.

Just like Appellants Babin, Hale and Deurock with respect to the EHS-Supervisor and EHS-II positions, Appellants Anselmo, Barlow, Braun, Camp, Eachon, Ellison, Hughes, Hylsky and Nelson contend that the EHS-Senior class was reallocated to pay grade "K" on May 29, 2001 and that each was entitled to be placed on the same relative position on pay grade "K" as they occupied while on pay grade "J". This contention has already been discussed and rejected above with respect to Appellants Hale, Babin and Duerock and that same discussion applies to these EHS-Senior Appellants. So, even if a reallocation was what occurred, Appellants have not been deprived of a right or benefit.

However, what did occur with the EHS-Senior class is different. The actions taken by PHD Director Bock to fill the new positions certainly look like promotions and have been termed promotions by Respondent. (See Exhibits D (p. 4, last partial paragraph), M (p. 4, second paragraph, section 5), N (July 18, 2002 "Promotional announcements") and even pages 15 and 16 of Respondent's Post-Hearing Reply Brief to the Hearing Officer). Respondent maintains this position on appeal, as well. See Respondent's Reply Brief of District on Appeal. This is consistent with the definition of "promotion": "the advancement through the competitive process of an employee with permanent status from a position which he or she occupies in one (1) class to a position in another class having a higher entrance salary." See Rule 010.46.

The key factual distinction is that the new EHS-Senior class classification was written to include additional responsibilities and supervisory duties, as discussed earlier, herein. Therefore, this was not simply a matter of reassigning a class to a higher pay grade. It was the creation of a

new class altogether and the promotion of certain Appellants into that class. The Hearing Officer was correct in so characterizing the movement of Appellants Anselmo, Barlow, Camp, Eachon, Ellison, Hughes and Nelson to the new EHS-Senior class on October 15, 2002 as promotions and not as reallocations or any other characterization.

Confusing this matter is the fact that, referring to Exhibit 18, the August 2002 problem solving request of Appellant Anselmo, as well as Mr. Anselmo's testimony at the hearing, Mr. Anselmo believed he had been moved to pay grade "K" in September, 2001 which would indicate his filling one of the "new" EHS-Senior positions at that time. Appellant Hylsky also testified that he thought he was moved to a "K" level in November 2001. This is not supported by the exhibits in the record and, in fact, not even by Director Bock's August 30, 2002 response to Anselmo's problem solving request (attached as part of Exhibit 18). A straightforward reading of that response refers to the new "seven EHS-Senior positions" and indicates that no one "will have to apply for these positions" but that they will be filled after interviews of the eight (8) employees currently holding positions as EHS-Seniors (the "old" EHS-Seniors).

In fact, with respect to Appellant Hylsky, he never became an EHS-Senior in pay grade "K". He remained an EHS-Senior in pay grade "J" until he took the epidemiologist position in September 2002. Director Bock testified this epidemiologist position was at a "comparable pay level" to the new EHS-Senior class at pay grade "K". See Tr., p. 227.

A close review of the other exhibits mentioned above (D, M, N) created throughout 2002 also shows that no new EHS-Senior positions (at paygrade "K") were filled yet. All Appellants were still occupying old EHS-Senior positions at pay grade "J" and performing duties commensurate with that position and pay grade. All that occurred in May 2001 was the creation of a "new class" of EHS-Seniors at pay grade "K" with increased responsibilities and duties than

the "old" EHS-Senior class. It was because of the great resistance and objection of the Appellants (over the period of time between May 2001 and October 2002) that none of the Appellants were moved ("promoted") to fill the newly created EHS-Senior positions in paygrade "K" until October 15, 2002.

Of the Appellants who were promoted to the new EHS-Senior class, none received pay increases over the period at issue except Anselmo, Camp, and Nelson. Their pay increases were the consequence of merit and/or longevity and step-up to paygrade, respectively. As the Hearing Officer found, promotions without pay raises is contrary to PHD written policy. Exhibit E, Section 3-8, states, "When an employee is promoted . . . to a class in a higher paygrade, the employee shall receive an increase." From the clear language of the section, the increase is mandatory. The section goes on to state how the mandatory increase will be determined: "The increase will be based upon the magnitude and the criticality of the position. The District Director shall be the sole authority for determining the amount of such increase."

The reasonable interpretation of this section is that although an increase is mandatory upon promotion, the amount of the increase is discretionary with the District Director. Budgetary constraints would be a factor to be considered in the reasonable exercise of the Director's discretion. A coherent interpretation of the section, however, would not permit an increase in the amount of zero. It would be untenable for Respondent to assert on the one hand that the EHS-Senior class specification effective May 29, 2001, so elevated the job accountabilities as to create an altogether new class, but on the other hand, to expect the employees to assume the heightened level of responsibility without any added compensation upon placement in the new class on October 15, 2002.

The PHD policy Section 3-8 disallows such a result. Consequently, according to Respondent's own characterization of what occurred between the DHR creation of the new EHS-Senior class specifications and the PHD reorganization process, Appellants who were promoted, being Anselmo, Barlow, Camp, Eachon, Ellison, Hughes, and Nelson were entitled to some pay increase associated with their promotions.

Appellant Hylsky never occupied a position in the new class of EHS-Seniors at pay grade "K" because he took the epidemiologist position in pay grade "K" in September 2002. Therefore, he is not entitled to any pay increase associated with promotion to a new EHS-Senior position in pay grade "K" because he was never so promoted. However, Appellant Hylsky was effectively promoted to the epidemiologist position in pay grade "K" in September 2002 and the evidence in the record is unclear as to whether he received a pay increase upon this promotion.

Appellant Braun's situation was unique. He was not given a position in the new EHS-Senior class. The Hearing Officer was correct in finding that Appellant Braun, like the other EHS-Senior Appellants, was not reallocated and would not have been entitled to a pay increase had he been reallocated. Further, as the Hearing Officer found, Appellant Braun was clearly not promoted to the new EHS-Senior class in pay grade "K" and therefore was not entitled to a pay increase.

Braun argues he was "demoted". However, the facts don't support this assertion. Prior to October 2002, Braun was an EHS-Senior in paygrade "J". After October 2002, Braun occupied a position in the reallocated EHS II class in paygrade "J". Braun now occupies a class with the same entrance salary as the class he previously occupied. The Commission finds that Braun did not receive a demotion as defined by Rule 010.19 and he has not been deprived of any right or benefit to which he is legally entitled.

Of those who were promoted to the new EHS-Senior class, only Nelson originally received a pay increase (a four-cent increase according to Exhibit 13) that can be attributed to the promotion and this was in order to bring him to the starting point of pay grade "K" as required by law.

Initially, Respondent presented no justification to the Hearing Officer for the lack of any pay increase associated with the promotions received by these Appellants, except general reference to Governor Kempthorne's "salary freeze." Pursuant to the Hearing Officer's request of the parties for citation of legal authority, Respondent submitted copies of Executive Orders (nos. 2001-10, 2001-17, 2002-09) and the May 2, 2002, Governor's office press release which are included in the record as Hearing Officer Exhibits I – IV and the Hearing Officer took official notice of these gubernatorial acts. Pursuant to the Hearing Officer's leave for supplemental briefing on the issue, Appellants and Respondent submitted written argument; Respondent's citing legislative action in 2002 and 2003 respecting general fund appropriations to the public health districts.

There is nothing in the evidence in this case or Respondent's cited authority that necessarily proscribes such promotional compensation adjustments. The only direct reference is to the Governor's directive that merit increases be suspended. However, as the Hearing Officer correctly noted, "merit increases," as defined by Rule 010.38 and Idaho Code § 67-5309C(b), relate to advancement <u>within</u> paygrade, as distinguished from "promotions" per Rule 010.46, which involve advancement to a position in a different, higher class and paygrade with attendant increase in accountabilities (magnitude and criticality of the position), as occurred here. The only submitted evidence or authority directly on point is Exhibit E, PHD policy section 3-8, and it requires pay increases be awarded to those Appellants who were promoted, namely Appellants

Anselmo, Barlow, Camp, Eachon, Ellison, Hughes, Hylsky (if he didn't receive one) and Nelson. The amount of such pay increases is left to the discretion of the Director. From Respondent's Reply Brief on Appeal, it appears PHD has already awarded retroactive pay increases back to October 15, 2002 in compliance with the Hearing Officer's Preliminary Order. If true, no additional pay increases to those entitled as a result of the Commission's final decision are legally required.

V.

CONCLUSION

Full and complete review of the record in this matter supports the Hearing Officer's conclusion that Appellants Hale, Babin (occupying EHS-Supervisor positions) and Duerock (occupying a EHS-II position), were reallocated to new paygrades as a result of PHD's reorganization and are not entitled to automatic pay increases. Appellants Hale, Babin and Duerock have not been deprived of a right or benefit to which they are legally entitled.

The Hearing Officer is also correct in holding that Appellants Anselmo, Barlow, Camp, Eachon, Ellison and Hughes received promotions to new EHS-Senior positions in pay grade "K" in October 2002 and are consequently entitled to pay increases pursuant to PHD written policy. The evidence also shows and the Commission finds that Appellant Hylsky was promoted to an epidemiologist position in pay grade "K" in September 2002 and if he did not receive a pay increase upon such promotion he is entitled to one retroactive to September 2002 pursuant to PHD written policy. Appellant Nelson did receive a four-cent increase in pay upon his promotion to bring him to the starting point pay rate within pay grade "K", as required by law and this pay increase also satisfied PHD written policy. PHD has no obligation to award any

additional pay increase to Appellant Nelson on remand of this matter, although it certainly has discretion and authority to do so. Finally, Appellant Braun, as the Hearing Officer correctly held, was not reallocated and based upon review of the record, Appellant Braun was not demoted. He has not been deprived of a right or benefit to which he is legally entitled. IT IS SO ORDERED.

The parties are responsible for their own attorney fees and costs.

VI.

STATEMENT OF APPEAL RIGHTS

Either party may appeal this decision to the District Court. A notice of appeal must be filed in the District Court within forty-two (42) days of the filing of this decision. Idaho Code § 67-5317(3). The District Court has the power to affirm, or set aside and remand the matter to the Commission upon the following grounds, and shall not set the same aside on any other grounds:

(1) That the findings of fact are not based on any substantial, competent evidence;

(2) That the commission has acted without jurisdiction or in excess of its powers;

(3) That the findings of fact by the commission do not as a matter of law support the decision. Idaho Code § 67-5318.

DATED this ____ day of July, 2004.

BY ORDER OF THE
IDAHO PERSONNEL COMMISSION

_____
Mike Brassey, Commission Chair

_____
Don Miller, Commissioner

_____
Pete Black, Commissioner

_____
Clarisse Maxwell, Commissioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered to the following parties by the method stated below on this ___ day of July, 2004.

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